
STATUTORY INSTRUMENTS

1990 No. 2605

**The Merchant Shipping (Dangerous Goods
and Marine Pollutants) Regulations 1990**

PART I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990 and shall come into force on 1st January 1991.

(2) The Merchant Shipping (Dangerous Goods) Regulations 1981⁽¹⁾ and the Merchant Shipping (Dangerous Goods) (Amendment) Regulations 1986⁽²⁾ are hereby revoked.

(3) In these Regulations, except where the context otherwise requires:

“Bulk Cargoes Code” means the 1989 edition of IMO Code of Safe Practice for Solid Bulk Cargoes;

“BCH Code” means the 1990 edition of IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;

“correct technical name” means a description of the goods sufficient to identify their dangerous characteristics, including any proper shipping name described in the IMDG Code;

“dangerous goods declaration” means a certificate or declaration in writing, signed by the person making it that the shipment offered for carriage is properly classified, packaged, marked, labelled or placarded, as appropriate, in accordance with the IMDG Code and is in a proper condition for carriage by sea;

“dangerous goods” means goods classified in the IMDG Code or in any other IMO publication referred to in these Regulations as dangerous for carriage by sea, and any other substance or goods the properties of which might be dangerous if that substance or those goods were carried by sea, and includes empty receptacles, residues in empty tanks or cargo holds which have been used previously for the carriage of dangerous goods unless such receptacles, empty tanks or cargo holds have been cleaned and dried, purged, gas freed or ventilated as appropriate or in the case of radioactive materials have been both cleaned and adequately closed; but the expression shall not include goods forming part of the equipment or stores of the ship in which they are carried;

“durably marked” means that the label or other marking in accordance with the provisions of these Regulations is such as to remain identifiable on the packages surviving at least three months immersion in the sea and “durable” shall be construed accordingly;

“employee” means a person (including the master but excluding dock workers or shore-based repair or other workers temporarily employed on board the ship) employed:

(1) S.I. 1981/1747, amended by S.I. 1986/1069.

(2) S.I. 1986/1069.

- (i) in the deck, engine, radio, medical or catering department of a ship, or
 - (ii) in the provision of goods, services or entertainment on board;
- “explosives” are those articles and substances contained in Class 1 of the IMDG Code;
- “flammable liquid” means a liquid the flash point of which is at or below 60 degrees Celsius (closed cup) in respect of bulk cargoes and at or below 61 degrees Celsius (closed cup) in respect of packaged goods;
- “forwarder” means the person by whom dangerous goods or marine pollutants are delivered to the ship or its agent;
- “Gas Carrier Code” means the 1983 edition of IMO Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;
- “Gas Carrier Code for Existing Ships” means the 1976 edition of IMO Code for Existing Ships Carrying Liquefied Gases in Bulk, including the first set of amendments (adopted by the Maritime Safety Committee of IMO in April 1978), the second set of amendments (adopted by the Maritime Safety Committee of IMO in May 1979), the third set of amendments (adopted by the Maritime Safety Committee of IMO in May 1980) and the fourth set of amendments (adopted by the Maritime Safety Committee of IMO in November 1984);
- “handling” includes the operations of loading, unloading and transferring dangerous goods and cleaning, purging, gasfreeing, ullaging, sounding, sampling and similar operations required for the carriage of such goods in a ship;
- “IMDG Code” means the 1990 consolidated edition of the International Maritime Dangerous Goods Code;
- “IMO” means the International Maritime Organization;
- “in bulk” means directly and without intermediate form of containment in a hold, tank or cargo space, which is a structural part of or permanently attached to a ship;
- “IBC Code” means the 1990 edition of IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;
- “IGC Code” means the 1983 edition of IMO International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;
- “marine pollutants declaration” means a certificate or declaration in writing, signed by the person making it, that the shipment offered for carriage is properly classified, packaged and marked in accordance with the IMDG Code and is in a proper condition for carriage to minimise the hazard to the marine environment;
- “marine pollutant” means a substance which presents a hazard to the marine environment and is identified in the IMDG Code as a marine pollutant;
- “Merchant Shipping Notice” means a Notice described as such, issued by the Department of Transport and any reference to a particular Merchant Shipping Notice includes a reference to any Merchant Shipping Notice amending or replacing it which specifies the date on which such subsequent Notice takes effect and which the Secretary of State considers relevant from time to time;
- “package” means an individual package or receptacle described in the IMDG Code and includes a freight container or a portable tank or tank container or tank vehicle or other vehicle or other cargo transport unit containing dangerous goods or marine pollutants for shipment, and “packaged” shall be construed accordingly;
- “packaged goods” means packaged dangerous goods or packaged marine pollutants;
- “shipper” means a person who, whether as principal or agent for another, consigns for carriage by sea dangerous goods or marine pollutants;

“shipowner” includes:

- (i) where the ship is chartered by demise, the demise charterer
- (ii) where the ship is managed by a ship management company, the manager;

“UN number” means the number allocated to the dangerous substance or article by the United Nations Committee of Experts on the Transport of Dangerous Goods specified in the sixth revised edition of their publication “Recommendations on the Transport of Dangerous Goods” published in 1989 by the United Nations Organization;

“United Kingdom Ship” has the same meaning as in section 21(2) of the Merchant Shipping Act 1979.

(4) Any reference in these Regulations to the Bulk Cargoes Code, the BCH Code, the Gas Carrier Code, the Gas Carrier Code for Existing Ships, the IMDG Code, the IBC Code, the IGC Code or the United Nations publication entitled “Recommendations on the Safe Transport of Dangerous Goods” shall include a reference to any document amending that publication which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice.

(5) Where these Regulations require the carriage of dangerous goods or marine pollutants to be in accordance with a Code referred to in paragraph (4) above, and the Secretary of State has specified in Merchant Shipping Notices M1435, M1436 or M1437 conditions in relation to such carriage then (whether or not the Code contains conditions on such matters) the Code shall have effect for the purpose of these Regulations as if it contains the conditions so specified by the Secretary of State. “Carriage” in this paragraph includes packing, documentation, packaging, marking, labelling, stowage, segregation and handling.

(6) The Secretary of State may grant exemptions from all or any of the provisions of these Regulations (as may be specified in the exemption) for classes or cases or individual cases on such terms (if any) as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

(7) The Dangerous Substance in Harbour Areas Regulations 1987(3) are hereby amended as follows:

- (a) in regulation 2(1) in sub-paragraph (a)(1) of the definition of “classification”, and in regulation 25(2)(e), for “the Merchant Shipping (Dangerous Goods) Regulations 1981” there shall be substituted “the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990”;
- (b) in regulation 2(1), in the definition of “the IMDG Code”, for “regulation 1(2) of the Merchant Shipping (Dangerous Goods) Regulations 1981” there shall be substituted “regulation 1(3) of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990”;
- (c) in regulation 3(1), for “regulation 1(2) of the Merchant Shipping (Dangerous Goods) Regulations 1981” there shall be substituted “regulation 1(3) of the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990; except that nothing in those Regulations shall be construed as defining a marine pollutant in Class 9 of the IMDG Code under UN number 3077 or 3082 or any substance otherwise included in Class 9 of the IMDG Code solely by reason of its being a marine pollutant, as a dangerous substance for the purpose of these Regulations.”.

Application

2.—(1) These Regulations apply to ships carrying dangerous goods in bulk or packaged form and marine pollutants in packaged form.

(2) These Regulations apply to United Kingdom ships wherever they may be and to other ships while they are within the United Kingdom or the territorial waters thereof.

General duties of shipowners and employers

3.—(1) It shall be the duty of every shipowner and employer of persons aboard a ship and every master of a ship to ensure, so far as is reasonably practicable, that when dangerous goods are being handled, stowed or carried on the ship nothing in the manner in which those goods are handled, stowed or carried as the case may be is such as might create a risk to the health or safety of any person.

(2) Without prejudice to the generality of the shipowner's or employer's or master's duty under paragraph (1) above:—

(a) the matters to which the duty of the shipowner and of the employer extends shall include in particular:

(i) the provision and maintenance of ship's structure, fittings and equipment for the handling, stowage and carriage of dangerous goods which is, so far as reasonably practicable, safe and without risk to health;

(ii) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as reasonably practicable, the health and safety aboard ship of all employees in connection with the handling, stowage and carriage of dangerous goods in the ship; and

(b) the duty of a master of a ship registered outside the United Kingdom shall include the matters specified in sub-paragraphs (2)(a)(i) and (ii).

(3) If a shipowner or employer or master fails to comply with any of the provisions of this regulation he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale.

(4) It shall be a good defence to a charge under this regulation in relation to the handling of dangerous goods that such handling was carried out in accordance with the Code of Practice at annex 1 to the Merchant Shipping Notice M1213.

General duties of employees aboard ship

4.—(1) It shall be the duty of every employee aboard ship:

(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions in connection with the handling, stowage and carriage of dangerous goods in the ship; and

(b) as regards any duty or requirement imposed on his shipowner or employer by the Merchant Shipping Acts 1894 to 1988 or any regulation or rule made thereunder with regard to the health and safety of persons aboard a ship to which these Regulations apply to cooperate with the shipowner or employer so far as is necessary to enable that duty or requirement to be performed or complied with in connection with the handling, stowage and carriage of dangerous goods in the ship.

(2) If any employee aboard a ship carrying dangerous goods fails to comply with any of the provisions of this regulation he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level three on the standard scale.

Misconduct endangering the ship or persons aboard ship

5.—(1) In connection with the handling, stowage and carriage of dangerous goods in the ship, no person shall intentionally or recklessly interfere with or misuse anything provided on, or disobey

instructions displayed on, a United Kingdom ship in the interests of health or safety in pursuance of the Merchant Shipping Acts 1894 to 1988 or any regulation or rule made thereunder.

(2) If any person in a ship carrying dangerous goods fails to comply with any of the provisions of this regulation he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level four on the standard scale.

Onus of proving what is reasonably practicable

6. In any proceedings for an offence under this Part of these Regulations consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.